IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 1338 of 1985

DATE OF DECISION: 23 .5.2007

Rattan Singh ...Appellant

VERSUS

Smt.Phoolan and others ...Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Roopak Bansal, Advocate for
Mr.S.K.Bansal, Advocate for the appellant

Mr.Bhoop Singh, Advocate for the respondents

Permod Kohli,J.

This Regular Second Appeal arises out of judgment and decree dated 4.2.1985 passed by the District Judge, Sonepat rejecting the application of the appellant for condonation of delay and consequently the appeal was dismissed.

It is an admitted case of the parties that there was a delay of only three days in filing the appeal before the District Judge, Sonepat. The appellant explained the delay by stating that he attended the Court on a number of occasions, but the judgment was not pronounced and finally asked the Clerk of his counsel to obtain the copy of the judgment and inform him. According to the appellant, the Clerk did not inform him and it was only when the appellant later visited the Court in connection with another case that he came to know about the decision. The Appellate Court, however, did not accept this explanation and held that there was a gross negligence on the part of the plaintiff/appellant and his agent who was Pleader's clerk. The Appellate Court also observed that Pleader's Clerk is not a person who should have been asked to obtain the copy of the judgment. I am at pain to observe that such an approach of the Appellate Court amounts to subverting the justice. The appellant has been non-suited only on account of delay of three days in filing the appeal before the District Judge, Sonepat, and that too, when explanation was tendered which seems to be plausible. Therefore, the judgment impugned is not justified in any circumstances.

Consequently, this Regular Second Appeal is allowed. The impugned judgment dated 4.2.1985 passed by the District Judge, Sonepat is set aside. The application under Section 5 of the Limitation Act filed before the District Judge, Sonepat is allowed

and delay in filing the appeal before the District Judge, Sonepat is condoned. The case is accordingly remanded back to the Court of District Judge, Sonepat for deciding the appeal on merits. Parties through their counsel are directed to appear before the District Judge, Sonepat on 9.8.2007.

Records of the courts below be also remitted back forthwith.

(PERMOD KOHLI)
JUDGE

23.5.2007
MFK

NOTE: Whether to be referred to the Reporter or not:YES/NO

PRITPAL SINGH NIJJAR
ADVOCATE

PUNJAB & HARYANA HIGH COURT
DELHI HIGH COURT
(Chandigarh)
SUPREME COURT OF INDIA

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To

The Managing Director,
MARKFED,
Chandigarh.

I have perused the file. From a perusal of the record it appears that the Post of Senior Manager (Liaison) is to be filled by promotion from the Officers working on the post of Liaison Officers. At present, Mr. H.K.Maini and Mr. B.C.Sobti are working on the post of Liaison Officers in the pay scale of Rs.7880-11660 w.e.f. 18.10.2001. These two Officers are to be considered for promotion to the post of Senior Manager (Liaison). Their service particulars for the purposes of this opinion have been taken from the Office Note dated 8.5.2007, which is as under:-

Shri B.C. Sobti :

1. Joined as Jr. Asstt./Typist in the scale of Rs.140-300 on 5.5.1970.

2. Promoted as Sr. Asstt. In the scale of Rs.570-1080 on 31.7.1980 (CP-101).

3. Vide orders dated 11.8.93 (CP-104), he was given additional charge of Care-Taker on 11.8.93 in addition to his duties as Senior Asstt. (Store) in the scale of Rs.1800-3200.

4. Vide orders dated 5/12.1.95 (CP-105), he was given further additional charge to perform duty as Resident Assistant in the scale of Rs.1800-3200.

5. **He was re-designated as Liaison Officer Gr-II (Hospitality) in his own pay scale i.e Rs. 5800-9200 (revised) vide orders dated 26.10.99 (CP-106), subject to approval of RCS, Punjab. RCS Punjab accorded his approval vide letter dated 16.11.99 (CP-107) subject to the condition that in future, he will neither make demand for higher pay scale nor he will be given any financial benefit.**

6. He was promoted as Liaison Officer in the scale of Rs.7880-11660 vide orders dated 18.10.2001 (CP-13), along with Shri H.K.Maini, L.O. Gr-II.

Shri H.K.Maini :

1. Joined as Jr. Asstt./Typist in the scale of Rs.140-300 on 30.10.75.

2. Promoted as Sr. Asstt. In the scale of Rs.1800-3200 (revised of Rs.570-1080) vide orders 18.6.93 (CP-108).

3. He was appointed as Sr. Asstt. Liaison Officer in the pay scale of Rs.1800-3200 w.e.f 18.6.1993 vide orders dated 20.8.93 (CP-109), against a newly created post of A.L.O by keeping one post of Sr. Asstt. In abeyance.

4.The post of Asstt. Liaison Officer held by Shri H.K.Maini was re-designated & upgraded as Liaison Officer Gr-II in the pay scale

of Rs.1800-3200 (revised to Rs. 5800-9200) vide orders dated 3.4.1998(CP-114). Further, his seniority has been counted against the post of A.L.O w.e.f 1993 being ex-cadre post, which is not to effect the seniority list of Sr. Assistants.

5.He was promoted as Liaison Officer in the scale of Rs. 7880-11660 vide orders dated 18.10.2001 (CP-13), along with Shri B.C.Sobti, I.O. Gr-II."

A comparative reading of the service particulars would show that Mr. Sobti was re-designated as Liaison Officer Grade-II Hospitality. He was promoted as Liaison Officer on 18.10.2001. On the other hand, Mr. Maini was appointed as Assistant Liaison Officer in the scale of Rs.1800-3200 by order dated 20.8.1993 against a newly created post of Assistant Liaison Officer by keeping one post of Senior Assistant in abeyance. This post was re-designated as Liaison Officer Grade-II. His seniority has been counted against the post of Assistant Liaison Officer w.e.f. 1993, being an ex-cadre post. Thus, it becomes obvious that Mr. Sobti was in the cadre of Assistant and re-designated as a Liaison Officer vide letter dated 16.11.1999. Seniority under the common cadre Rule 1990 on various posts is determined by continuous length of service on the post (Rule 2.16). It appears from the record that Mr. Maini was appointed on the post of Liason Officer Grade II by order dated 3.4.1998 and Mr. Sobti was appointed on the post of Liason Officer Grade II by letter dated 16.11.1999.

Therefore, I am of the opinion that Mr. Maini would be senior to Mr.Sobti on the post of Liaison Officer Grade II. Both the Officers were promoted as Liaison Officer in the scale of Rs.7880-11660 by order dated 18.10.2001.

The promotion to the post of Senior Manager (Liaison) is to be made from the post of Liaison Officer. The criteria for promotion is seniority-cum-merit. Both the Officers had earlier made a joint representation that there is stagnation on the post of Liaison Officer as there is no further promotion. Even though the post of Liaison Officer has been equated with the post of District Manager. The District Managers have a promotion channel to be next higher post of Senior Manager. It was, therefore, requested that both the posts of Liaison Officer may be considered for allowing the next higher scale in the hierarchy of District Manager i.e. scale of Rs. 10025-15100. The Board of Directors of MARKFED, therefore, resolved and approved to utilise one post of Senior Maintenance Engineer of Khanna Plant as Senior Manager (Liaison) on the common cadre side. Since there is only one post of Senior Manager available, the question of selection as arisen as there are two Liaison Officers eligible for appointment. I am of the opinion that since both the Officers were appointed on the post of Liaison Officer by a common order dated 18.10.2001, their seniority will have to be considered, on the basis of their

seniority in the lower cadre of Liaison Officer Grade-II. On the basis of this criteria, Mr. Maini would be senior to Mr.Sobti. Rule 16 of the Common Cadre Rules, 1990 provides that in case of two members appointed on the same date, a member appointed by direct recruitment shall be senior to a member recruited otherwise. Rule 2.16 (c) provides that in case of members appointed by promotion, the seniority shall be determined according to the seniority of such members in the appointments from which they were promoted. Both the Officers have been promoted on the post of Liaison Officers from the post of Liaison Officer Grade II. Since Mr.Maini was appointed earlier on the post of Liaison Officer Grade II, he would rank senior to Mr.Sobti. Since the relevant Rule provides for filling up posts of Senior Manager (Liaison) by promotion, on the basis of seniority-cum-merit, the process of selection would not be appropriate. When the criteria for seniority-cum-merit is applicable, a senior officer is entitled to promotion, irrespective of the better record of the junior. This opinion will be supported by the law laid down by the Supreme Court in the case of **Syed Yakoob v. K.S.Radhkrishnan and others, AIR 1964 S.C. 477** In case any other criteria other than seniority-cum-merit is applied, it would be outside the purview of the Rule.